

§ 1.626

material, explaining the basis for such belief; or

(iv) That the Forest Service agrees that the issue is factual, material, and in dispute.

(2) NFS's answer must also indicate whether the hearing request will be consolidated with one or more other hearing requests under § 1.623 and, if so:

(i) Identify any other hearing request that will be consolidated with this hearing request; and

(ii) State which Department will conduct the hearing and provide contact information for the appropriate Department hearings component.

(3) If the Forest Service plans to rely on any scientific studies, literature, and other documented information that are not already in the license proceeding record, a copy of each item must be provided with NFS's answer.

(4) NFS's answer must also indicate whether or not the Forest Service consents to service by electronic means under § 1.613(c)(4) and, if so, by what means.

(c) *Witnesses and exhibits.* NFS's answer must also contain a list of the Forest Service's witnesses and exhibits that the Forest Service intends to present at the hearing, other than solely for impeachment purposes.

(1) For each witness listed, the Forest Service must provide:

(i) His or her name, address, telephone number, and qualifications; and

(ii) A brief narrative summary of his or her expected testimony.

(2) For each exhibit listed, the Forest Service must specify whether it is in the license proceeding record.

(d) *Page limits.* (1) For each disputed factual issue, the information provided under paragraph (b)(1) of this section may not exceed two pages.

(2) For each witness, the information provided under paragraph (c)(1) of this section may not exceed one page.

(e) *Notice in lieu of answer.* If NFS elects not to answer a hearing request:

(1) The Forest Service is deemed to agree that the issues listed by the requester are factual, material, and in dispute;

(2) The Forest Service may file a list of witnesses and exhibits with respect to the request only as provided in § 1.642(b); and

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(3) NFS must include with its case referral under § 1.623 a notice in lieu of answer containing the information required by paragraph (b)(2) of this section, if the hearing request will be consolidated with one or more other hearing requests under § 1.623, and the statement required by paragraph (b)(4) of this section.

§ 1.626 What will the Forest Service do with any hearing requests?

(a) *Case referral.* Within 55 days after the deadline in § 1.621(a)(2) or 35 days after the expiration of any stay period under § 1.624, whichever is later, NFS will refer the case for a hearing as follows:

(1) If the hearing is to be conducted by USDA, NFS will refer the case to the OALJ.

(2) If the hearing is to be conducted by another Department, NFS will refer the case to the hearings component used by that Department.

(b) *Content.* The case referral will consist of the following:

(1) Two copies of any preliminary condition under § 1.620;

(2) The original and one copy of any hearing request under § 1.621;

(3) The original and one copy of any notice of intervention and response under § 1.622;

(4) The original and one copy of any answer or notice in lieu of answer under § 1.625; and

(5) The original and one copy of a referral notice under paragraph (c) of this section.

(c) *Notice.* At the time NFS refers the case for a hearing, it must provide a referral notice that contains the following information:

(1) The name, address, telephone number, and facsimile number of the Department hearings component that will conduct the hearing;

(2) The name, address, and other contact information for the representative of each party to the hearing process;

(3) An identification of any other hearing request that will be consolidated with this hearing request; and

(4) The effective date of the case referral to the appropriate Department hearings component.

(d) *Delivery and service.* (1) NFS must refer the case to the appropriate Department hearings component by one of the methods identified in § 1.612(b)(1)(i) and (b)(1)(ii).

(2) The Forest Service must serve a copy of the referral notice on FERC and each party to the hearing by one of the methods identified in § 1.613(c)(1) and (c)(2).

§ 1.627 What regulations apply to a case referred for a hearing?

(a) If NFS refers the case to the OALJ, these regulations will continue to apply to the hearing process.

(b) If NFS refers the case to the Department of Interior's Office of Hearing and Appeals, the regulations at 43 CFR 45.1 *et seq.* will apply from that point on.

(c) If NFS refers the case to the Department of Commerce's designated ALJ office, the regulations at 50 CFR 221.1 *et seq.* will apply from that point on.

GENERAL PROVISIONS RELATED TO
HEARINGS

§ 1.630 What will OALJ do with a case referral?

Within 5 days after the effective date stated in the referral notice under § 1.626(c)(4), 43 CFR 45.26(c)(4), or 50 CFR 221.26(c)(4):

(a) The Hearing Clerk must:

(1) Docket the case;

(2) Assign an ALJ to preside over the hearing process and issue a decision; and

(3) Issue a docketing notice that informs the parties of the docket number and the ALJ assigned to the case; and

(b) The ALJ must issue a notice setting the time, place, and method for conducting an initial prehearing conference under § 1.640. This notice may be combined with the docketing notice under paragraph (a)(3) of this section.

§ 1.631 What are the powers of the ALJ?

The ALJ will have all powers necessary to conduct a fair, orderly, expeditious, and impartial hearing process relating to Forest Service's or other Department's condition or prescription that has been referred to the ALJ for hearing, including the powers to:

(a) Administer oaths and affirmations;

(b) Issue subpoenas under § 1.647;

(c) Shorten or enlarge time periods set forth in these regulations, except that the deadline in § 1.660(a)(2) can be extended only if the ALJ must be replaced under § 1.632 or 1.633;

(d) Rule on motions;

(e) Authorize discovery as provided for in §§ 1.641 through 1.647;

(f) Hold hearings and conferences;

(g) Regulate the course of hearings;

(h) Call and question witnesses;

(i) Exclude any person from a hearing or conference for misconduct or other good cause;

(j) Summarily dispose of any hearing request or issue as to which the ALJ determines there is no disputed issue of material fact;

(k) Issue a decision consistent with § 1.660(b) regarding any disputed issue of material fact; and

(l) Take any other action authorized by law.

§ 1.632 What happens if the ALJ becomes unavailable?

(a) If the ALJ becomes unavailable or otherwise unable to perform the duties described in § 1.631, the Hearing Clerk will designate a successor.

(b) If a hearing has commenced and the ALJ cannot proceed with it, a successor ALJ may do so. At the request of a party, the successor ALJ may recall any witness whose testimony is material and disputed, and who is available to testify again without undue burden. The successor ALJ may, within his or her discretion, recall any other witness.

§ 1.633 Under what circumstances may the ALJ be disqualified?

(a) The ALJ may withdraw from a case at any time the ALJ deems himself or herself disqualified.

(b) At any time before issuance of the ALJ's decision, any party may move that the ALJ disqualify himself or herself for personal bias or other valid cause.

(1) The party must file the motion promptly after discovering facts or other reasons allegedly constituting cause for disqualification.